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November 18, 2024

Via ECF

The Honorable J. Paul Oetken
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *In re Application of Loudmila Bourlakova et al.*, 1:24-MC-0071 (JPO)

Dear Judge Oetken:

We are counsel to Petitioners Loudmila and Veronica Bourlakova in the above-referenced action brought pursuant to 28 U.S.C. §1782, in connection with which Petitioners¹ seek discovery from The Clearing House in New York via subpoena (the “CHIPS Subpoena”) in aid of their action pending in the United Kingdom (the “U.K. Proceedings”). We write to inform the Court that, in light of developments in the U.K. Proceedings, Petitioners believe that the motion to vacate pending before the Court—which, together with related orders issued by the Court, is blocking The Clearing House’s document production—would need to be resolved within the coming weeks in order to be of utility to Petitioners in the U.K. Proceedings.

By way of background, Petitioners’ 1782 application (the “1782 Application”) was filed on February 20, 2024, which the Court granted two days later (Dkt No. 7). Petitioners served the CHIPS Subpoena shortly thereafter. At the time, The Clearing House informed Petitioners’ counsel that its subpoena response time would likely be approximately 12 to 20 weeks, given a subpoena backlog.

On March 25, 2024—before The Clearing House produced any documents—intervenors the Kazakovs filed a motion to intervene, vacate and quash the CHIPS

¹ Unless otherwise noted, capitalized but undefined terms should be given the same meaning as in the Memorandum of Law in Support of Application of the Petitioners for an Order to Take Discovery for Use in a Foreign Proceeding Pursuant to 28 U.S.C. §1782, Dkt. No. 5 (the “Petition”).

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Subpoena (“the Vacate Motion”). The Vacate Motion has been fully briefed and pending with the Court since May 13, 2024. In connection with the Vacate Motion, the Court entered a provisional order directing The Clearing House to halt any document production, pending resolution of the Vacate Motion (the “Hold Order”) (Dkt No. 16). On August 14, 2024, at Petitioners’ request, the Court further ordered The Clearing House to continue to search for and gather responsive documents in the interim, pending resolution of the Vacate Motion, in order to avoid a situation in which the CHIPS Subpoena fell behind in The Clearing House’s substantial subpoena queue. (Dkt No. 26.)

Although the U.K. Court had originally listed the hearing of Petitioners’ U.K. Injunction Application for early October 2024, that hearing has been vacated and relisted for March 2025. However, the parties are in the process of scheduling multiple other related applications for hearing in the U.K. Proceedings in the coming months, including (a) an application by the Kazakovs to bring additional claims against the Petitioners alleging, among other things, that materials in the CT Report were forged; and (b) applications by the Kazakovs, Mr. Anufriev, and Edelweiss against Petitioners and the investigative firm CT for disclosure of information relating to the acquisition and use of material contained in the CT Report. In that regard, on October 22, 2024, CT filed evidence in the U.K. Proceedings in which it rejected the forgery allegations. Petitioners are currently considering their position in light of that evidence.

In addition to being important for the purposes of Petitioners’ U.K. Injunction Application, the information and transactional data Petitioners have subpoenaed from The Clearing House has the potential to shed significant light on the Kazakovs’ position and therefore bears on the applications that are currently being scheduled in the U.K. Proceedings. Thus, in order for the document production from The Clearing House to be of use to Petitioners in the U.K. Proceedings, the pending Vacate Motion would need to be resolved in time for the subpoenaed materials to be used in connection with those applications. Most recently, the Kazakovs’ application referred to at (a) above has been set (in a floating 3-day window) for January 27, 2025, with a time estimate of half a day.

Petitioners are prepared to provide any additional information or argument that the Court deems necessary to assist the Court in reaching a determination on the Vacate Motion.

Respectfully submitted,

ALSTON & BIRD

By:

E. Scott Schirick

cc: Counsel of record (via ECF)